

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5360 of 1998

with

SPECIAL CIVIL APPLICATION NO. 1197 OF 1998

with

CIVIL APPLICATION NO. 9820 OF 1997

WITH

CIVIL APPLICATION NO. 2655 OF 1998

WITH

CIVIL APPLICATION NO. 3755 OF 1998.

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GOPALSINH PADAMSINH VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR BG JANI for Petitioner

MR.H.M.BHAGAT FOR RESPONDENT No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 31/07/98

ORAL JUDGEMENT

Both these petitions and the Civil Applications filed therein are taken up for final disposal today.

2. Special Civil Application No.5360 of 1998 challenges the Award dated 31-1-1998 passed by the Officer on Special Duty, Private Forest Acquisition, an officer of the State Government under the provisions of the Gujarat Private Forest (Acquisition) Act, 1972 (hereinafter referred to as the Act) respondent no.3 herein, in so far as respondentNo.3 has awarded compensation of only Rs.9,32,358/26ps. and that too without any interest thereon to the petitioner.

3. Special Civil Application No. 1197 of 1997 was earlier admitted by this Court and certain interim directions were given. That petition was filed by the same petitioner i.e. Gopalsinh Padamsinh Vaghela for directing the respondents to accord approval to the Draft Award prepared by 3rd respondent which award was for an amount of Rs.1,10,03,641/20 ps. and which award was sent to the State Government for approval under Section 8 of the Act as an Award for any amount exceeding Rs.3 lacs requires approval of the State Government.

4. The petitioner herein was an ex jagirdar of Poshina Jagir of Khedbrahma taluka in Sabarkantha District. The lands with private forest trees were acquired by the State Government under the provisions of the Act. Possession of the said lands with trees was taken over by the Revenue Department of the State from the petitioner in the year 1965 under the Jagir Abolition Act. In 1972 the Revenue Department handed over possession of the forest lands alongwith trees thereon to the Forest Department of the State Government.

5. The petitioner lodged a claim for compensation to the tune of Rs. 1,87,20,000/as compensation for trees and for Rs. ten lacs as compensation for the land. The concerned officer, who was then holding the post of Officer on Special Duty under the Act prepared a Draft Award dated 24-11-1995 for awarding a sum of Rs.1,10,03,641/20 ps. with interest thereon at the rate of 4.5% from the date of taking over possession of the land till payment of compensation. The said Draft Award was forwarded by the Officer on Special Duty for approval of the Government under Section 8 of the Act. However, no decision was being taken thereon and therefore, the petitioner filed Special Civil Application No.1197/97 for directing the Government to accord approval to the draft award. In view of the inaction on the part of the State Government this Court issued certain directions on 18-3-1997 directing the Chief Conservator of Forests, Wild Life, Gandhinagar, to send his remarks to the Secretary Forest Department, Government of Gujarat,

within the stipulated time limit and the State was directed to take appropriate steps on the draft award within two weeks after receiving the remarks from the Chief Conservator of Forests. Thereafter on 22-4-1997 the State Government passed an order remanding the matter back to the Officer on Special Duty.

6. When the said petition (SCA No.1197/97) came up for further hearing on 24-10-1997 the petitioner sought to challenge the aforesaid order of remand on various grounds one of them being that the matter was unnecessarily being dragged and the petitioner was not being paid compensation for the private forest with trees, which was acquired by the Government in the year 1965. While not interfering with the order of remand passed by the State Government, this Court gave certain interim directions in order to protect the interest of both the parties.

In the Affidavit-in-reply dated 14-7-1997 filed by the Under Secretary to the Government of Gujarat, Forest and Environment Department, it was stated that the Government had calculated the amount of compensation for trees to be Rs. 13,49,053/40 ps which the petitioner was entitled to. It was further clarified that the above amount was as per the Government calculation which did not take into account the value of any tree/timber/forest produce removed by the petitioner after the notified date and hence it is to be adjudicated after hearing the parties. After referring to the relevant facts including the long lapse of time and the apathy shown by the Government and the aforesaid statement made in the affidavit-in-reply, this Court gave the following directions:

In the facts and circumstances of the case, respondent no.3 Officer on Special Duty is directed to act in accordance with the Government Order dated 22-4-1997 and submit the award again before the Government at the earliest possible opportunity but in no case later than 31-12-1997 and thereafter within a period of one month the question of approval should be decided by the State Government. It is further ordered that the amount of Rs.13,49,053.40 which comes out as compensation according to the government calculation shall be deposited in this Court on or before 10.11.1997 and the amount so deposited in the registry of this Court shall be kept in fixed deposit for a short period of three months in any Nationalized bank. In case, the officer

on Special Duty fails to pass the draft award before 31-12-1997 and the question of approval is not decided by the Government before 31-1-1998, it will be open for the petitioner to withdraw this amount from the Court after making proper application before the Court. The Officer on Special Duty would decide the matter afresh after hearing the petitioner. If there is any allegation with regard to the removal of the trees/timber/forest by the petitioner, such question shall be decided on the basis of the adequate material and if there is any such allegation even the State Government would also consider and hear the petitioner before deciding the question of approval."

It is stated at the Bar that in compliance with the aforesaid directions the State Government deposited Rs.13,49,053.40ps on 9-11-1997; the Officer on Special Duty also proceeded with the hearing of the matter pursuant to the order of remand and with the approval of the State Government the final award is published on 31-1-1998 determining the amount of compensation for trees at Rs.9,32,358.26ps. By the said award the Officer on Special Duty has also determined the value of the trees removed by the contractor at Rs.59,621.12ps. subject to any recovery of any other Government dues. Respondent no.3 did not award any interest on the amount of compensation on the ground that the delay in the proceedings was caused by the petitioner.

It is the aforesaid award dated 31-1-1998 which is challenged by the petitioner in Special Civil Application No. 5360 of 1998.

7. In response to the notice issued by this Court, the learned Counsel for the respondents submits that the petitioner has an equally efficacious alternative remedy of filing appeal before the Gujarat Revenue Tribunal and therefore, this Court may not entertain this petition under Articles 226 and 227 of the Constitution. It is further submitted that the respondents are prepared to pay the amount determined by respondent no.3 in the final award dated 31-1-1998 and therefore, it is open to the petitioner to collect the said amount from respondent no.3.

8. Mr.Jani, learned Counsel for the petitioner however, submits that since respondent no.3 has awarded an amount which is not only much less than the amount which was already determined in the draft award dated

24-11-1995 but it is even less than the amount calculated by the Government and mentioned in Special Civil Application No.1197 of 1997 and having regard to the lapse of more than 30 years since the lands and forests were acquired by the Government, this Court should not relegate the petitioner to any alternative remedy and should examine the legality and validity of the award on merits. It is further submitted that in any view of the matter the amount of Rs.13,49,053.40ps. deposited by respondent no.3 pursuant to the order passed by this Court on 24-10-1997 should be awarded to the petitioner as the amount is still lying in this Court in Fixed Deposits.

In response to the query from the Court as to why the petitioner is making request for the withdrawal of Rs.13,49,053/40 when the final award is for Rs.8,72,737.14ps. Mr.Jani hassubmitted that for no fault of the petitioner, respondent no.3 has denied the relief of interest which is required to be paid to the petitioner by the Government by virtue of the provisions of Section 9 of the Act. It is submitted that the possession of the land was taken over by the State Government in the year 1965 and the same was handed over to the Forest Department in the year 1972 and the petitioner has lodged his claim for compensation for trees as per the provisions of the Act in the year 1974. It is submitted on demurrer that as per section 9 of the Act, interest is payable from the date of acquisition of the trees and therefore, the petitioner is entitled to receive interest from 1965 till November 1997, even if the amount of compensation for trees is to be determined at Rs.8,72,737/14ps. as determined by respondent no.3. This argument is of course in the alternative and without prejudice to his challenge on merits.

9. Mr.Bhagat with Mr.P.S.Patel learned Counsel for the respondents have opposed the above request and have submitted that when the petitioner is required to prefer an appeal before the Gujarat Revenue Tribunal, the petitioner cannot be permitted to withdraw any amount exceeding the amount of final award and the amount in excess of the awarded amount may be permitted to be withdrawn. In fact their contention is that Civil Application No.2655 of 1998 filed by the State of Gujarat and the Officer on Special Duty should be allowed and they should be permitted to withdraw the entire amount of Rs.13,49,053.40ps. with interest and that out of the said amount respondent no.3 will pay the petitioner the amount as per the final award dated 31-1-1998.

10. Having heard the learned Counsel for the parties, it appears to the Court that looking to the nature of the controversy between the parties about the amount of compensation it would be just and proper to relegate the petitioner to the statutory alternative remedy of filing appeal before the Gujarat Revenue Tribunal.

11. The only question which remains for consideration is as to how much amount should be permitted to be withdrawn by the petitioner. There cannot be any dispute that the petitioner would certainly be entitled to withdraw full amount as per the Award dated 31-1-1998. However, there is some substance in the prayer made by Mr.Jani for the petitioner that when the petitioner has been deprived of compensation for a long period of 32 years and that it was the petitioner who was requesting the authorities to determine the compensation expeditiously and it was the petitioner who had to file the petition in view of the inaction on the part of the Government in not taking action on the draft award, the petitioner cannot be said to be guilty of delay in determination of the amount of compensation. The Officer on Special Duty while declining the petitioner's prayer for interest has not given any details before arriving at any conclusion that the petitioner was guilty of delay so as to deny him interest at 4.5% for the entire period of 32 years.

At this stage Mr.B.G.Jani has further pointed out that according to the affidavit which was filed in Special Civil Application No.1197 of 1998, it was stated that the petitioner would be entitled to get Rs.13,49,053.40 subject to deduction of any amount for the value of trees cut or removed by the contractor. Since that amount was not determined the affidavit-in-reply naturally did not quantify that amount. Now that the said amount of value of trees removed by the petitioner or the contractor is available and is already determined by the Officer on Special Duty at Rs.59,621/- that amount can certainly be withdrawn by the Govt. Now, it is possible to calculate the difference between the amount of compensation for trees at Rs.12,89,432.28ps. (i.e. Rs.13,49,053.40 less Rs.59,621.00) as calculated by the Government earlier and the final amount awarded by the Officer on Special Duty at Rs.8,72,737.14 ps. (i.e. Rs.9,32,358.26 less Rs.59,621.00). The real dispute is, therefore, with regard to the difference amount of Rs.4,16,695.14 ps. and whether this amount should be permitted to be withdrawn by the petitioner.

12. The Court finds substance in the argument of Mr.Jani that the aforesaid amount of Rs.4,16,695.14 ps. works out approximately equal to simple interest at the rate of 4.5% for a period of 12 years on Rs.8,72,737.14ps.Hence even if there were any substance in the finding of the Officer on Special Duty that the petitioner was responsible for delay, then even if it were to be held that the petitioner was responsible for delay of even 50% of the period, the petitioner would be required to be paid interest at the rate of 4.5% on Rs.8,72,737/14ps. for at least 12 years. Moreover, the Government had retained the amount of Rs.8,12,737.14ps. for all these 32 years. Hence the delay did not work to the prejudice to the Government as its borrowings from other sources was not at less than 4.5% interest p.a. In the facts and circumstances of the case, therefore, it appears to the Court that without examining the merits of the challenge to the amount of the compensation determined as per the final award dated 31-1-1998 and without expressing any final opinion on the challenge to the non-award of the interest by the Officer on Special Duty to the petitioner but having regard to the fact that the proceedings have remained pending for decades it appears to the Court that it would be just and proper to permit the petitioner to withdraw Rs.12,89,432/28ps. being the difference between the amount of Rs.13,49,053.40 (the amount of compensation for trees as mentioned in the affidavit of the Government and deposited in this Court earlier) and Rs.59,621.12 (being the amount of value of trees removed by the petitioner or his contractor as determined by the Officer on Special Duty) with proportionate interest thereon. The amount has been lying in the Fixed Deposit and earning interest as per the previous order of this Court in Special Civil Application 1197 of 1997.

13. As far as Mr.Patel's contention that giving any such direction would amount to modifying the award, it is required to be stated that when the Officer on Special Duty has not awarded any interest for any period whatsoever out of the period of 32 years from the date of acquisition of the lands and trees by the Government till the date of deposit of the amount in November 1997 and which deposit was made pursuant to the interim direction issued by this Court on the basis of the Affidavit-in-reply filed on behalf of the State Government withdrawal of the aforesaid amount by the petitioner is granted on the basis that there is nothing on record to show that the petitioner was guilty of causing delay of 32 years. Even if it were to be assumed that the petitioner's contribution to the said delay is

even 50% even then the petitioner would be entitled to get interest for more than 12 years and as stated above, the rate of interest is simple interest at 4.5%. Hence, in the facts and circumstances of the case and in the interest of justice such permission is required to be granted subject to an undertaking from the petitioner that in case the Tribunal comes to the conclusion that the petitioner was not entitled to any interest the petitioner shall refund the amount of Rs.4,16,695.14 ps. with proportionate interest, alongwith interest at such rate as may be determined by the Tribunal and also subject to the petitioner giving security to the satisfaction of the Registrar of this Court.

14. The Tribunal will examine the petitioner's challenge qua the amount of compensation as well as qua the non-grant of interest by the Officer on Special Duty to the petitioner for any period, without being influenced by any observation in this judgment.

15. In view of the fact that the proceedings for compensation have remained pending for more than two decades, as and when the petitioner files appeal, the Gujarat Revenue Tribunal will consider the petitioner's application for condonation of delay in filing of appeal and also any request for fixing an early date of hearing of the appeal. The Tribunal will certainly consider that this Court had entertained the petition and issued notice to the respondents and that it is at the instance of the respondents that the petitioner is being relegated to the remedy of appeal.

16. In view of the above discussion both Special Civil Application Nos. 1197/97 and 5360 of 1998 are disposed of on the ground that the petitioner has an equally efficacious alternative remedy and subject to the liberty granted to the petitioner to withdraw Rs.12,89,432.28ps. with proportionate interest thereon as accrued in the Fixed Deposit Account opened pursuant to the order dated 24-10-1997 passed in Special Civil Application No.1197/97 after the petitioner files an undertaking before this Court that in case the Gujarat Revenue Tribunal holds that the petitioner was not entitled to any interest on the award amount of Rs.8,72,737.14ps. for any part of the period between 1965 and November 1997, subject to his right to challenge such judgment and obtain appropriate orders in those proceedings, the petitioner shall refund the amount of Rs.4,16,695.14 ps. to the State Government alongwith interest at such rate as may be determined by the Tribunal and within such time as may be directed by the

Tribunal; and subject to the petitioner furnishing security to the satisfaction of the Registrar of this Court for the amount of Rs.4,16,695.14 ps. and proportionate thereon. The balance amount of Rs.59,621.12 with proportionate interest thereon is permitted to be withdrawn by the Deputy Conservator of Forest, District Surendranagar.

17 Both the Special Civil Applications stand disposed of in terms of the aforesaid directions and observations. Rule is discharged in Special Civil Application No.1197 of 1997. Notice is discharged in Special Civil Application No.5360 of 1998.

18. Since the petitions are disposed of the Civil Applications do not survive and are disposed of accordingly.

19. In order to enable the respondents to have further recourse in accordance with law, the operation of this order is stayed for a period of one month from today.

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